



General Assembly

January Session, 2013

Committee Bill No. 5392

LCO No. 2666



Referred to Committee on BANKS

Introduced by:
(BA)

***AN ACT PROVIDING CONSUMER PROTECTION TO CLIENTS OF
EXCHANGE FACILITATORS FOR TAX DEFERRED EXCHANGES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2013*) As used in this section
2 and sections 2 to 7, inclusive, of this act:

3 (1) "Affiliated with" means that a person, directly or indirectly,
4 through one or more intermediaries, controls, is controlled by or is
5 under common control with another specified person;

6 (2) "Client" means a taxpayer with whom an exchange facilitator
7 enters into an agreement, as described in subparagraph (B) of
8 subdivision (3) of this section;

9 (3) "Exchange facilitator" means a person who: (A) Maintains an
10 office in this state for the purpose of soliciting business facilitating the
11 exchange of like-kind property, as described in subparagraph (B) of
12 this subdivision; or (B) for a fee (i) facilitates an exchange of like-kind
13 property by entering into an agreement with a client pursuant to
14 which the exchange facilitator acquires from such client the contractual

15 rights to sell such client's relinquished property located in this state
16 and transfer a replacement property to such client as a qualified
17 intermediary, within the meaning of 26 CFR 1.1031(k)-1(g)(4), (ii)
18 enters into an agreement with a client to take title to a property in this
19 state as an exchange accommodation titleholder, as defined in Revenue
20 Procedure 2000-37 issued by the Internal Revenue Service, or (iii)
21 enters into an agreement with a client to act as a qualified trustee or
22 qualified escrow holder, as such terms are defined in 26 CFR 1.1031(k)-
23 1(g)(3); but shall not include:

24 (I) Any financial institution, as defined in subdivision (6) of this
25 section, that is acting solely as a depository for exchange funds or
26 solely as a qualified escrow holder or qualified trustee, as such terms
27 are defined in 26 CFR 1.1031(k)-1(g)(3), and is not otherwise facilitating
28 exchanges in accordance with subparagraph (B) of subdivision (3) of
29 this section;

30 (II) An individual or entity that is teaching seminars or classes or
31 giving other presentations to attorneys, accountants, real estate
32 professionals, tax professionals or other professionals where the
33 primary purpose is to teach about tax deferred exchanges or to train
34 such professionals to act as exchange facilitators, or any individual or
35 entity advertising for such seminars, classes or other presentations; or

36 (III) An entity that is wholly owned by an exchange facilitator or by
37 a person representing the exchange facilitator and used by such
38 exchange facilitator or person to facilitate exchanges or take title to
39 property in this state as an exchange accommodation titleholder;

40 (4) "Exchange funds" means the funds received by an exchange
41 facilitator from or on behalf of a client for the purpose of facilitating an
42 exchange of like-kind property;

43 (5) "Fee" means compensation of any nature, direct or indirect,
44 monetary or in-kind, that is received by a person or related person, as
45 defined in Section 267(b) or Section 707(b) of the Internal Revenue

46 Code of 1986, or any subsequent corresponding internal revenue code
47 of the United States, as amended from time to time, for any services
48 relating or incidental to the exchange of like-kind property under
49 Section 1031 of said Internal Revenue Code;

50 (6) "Financial institution" means any bank, federal credit union,
51 Connecticut credit union, savings and loan holding company, savings
52 and loan association, savings bank, trust company or trust bank, as
53 such terms are defined in section 36a-2 of the general statutes,
54 chartered under the laws of this state or the United States whose
55 accounts are insured by the full faith and credit of the United States of
56 America, the Federal Deposit Insurance Corporation, the National
57 Credit Union Share Insurance Fund or other similar or successor
58 programs;

59 (7) "Person" means a natural person, cooperative association, limited
60 liability company, firm, partnership, corporation or other legal entity,
61 and includes any agent or employee of any such person;

62 (8) "Pool" means to (A) aggregate exchange funds of multiple
63 taxpayers for investment purposes to achieve common investment
64 goals and efficiencies, and (B) ensure that such exchange funds are
65 readily identifiable as to each taxpayer for whom they are held,
66 through an accounting or subaccounting system;

67 (9) "Prudent investor standard" means the prudent investor rule, as
68 set forth by the Connecticut Uniform Prudent Investor Act, or as
69 otherwise defined by part VII of chapter 802c of the general statutes;
70 and

71 (10) "Publicly traded company" means a corporation whose
72 securities are publicly traded on the New York Stock Exchange, the
73 American Stock Exchange, or the national market system of the
74 National Association of Securities Dealers Automated Quotation
75 System established pursuant to the Securities Exchange Act of 1934,
76 and the subsidiaries of any such corporation.

77 Sec. 2. (NEW) (*Effective October 1, 2013*) An exchange facilitator shall
78 notify each client, whose relinquished property, as defined in 26 CFR
79 1.1031(k)-1(a), is located in this state or whose replacement property,
80 as defined in 26 CFR 1.1031(k)-1(a), held under a qualified exchange
81 accommodation agreement is located in this state, of any change in
82 control of the exchange facilitator. The exchange facilitator shall notify
83 each such client not later than ten business days after the effective date
84 of such change in control by facsimile, electronic mail transmission or
85 first class mail and by posting such notice of change of control on the
86 exchange facilitator's web site for a period ending not earlier than
87 ninety days after the change in control. Such notification shall set forth
88 the name, address and other contact information of the persons to
89 whom control was transferred. Notwithstanding the provisions of this
90 section, if the exchange facilitator is a publicly traded company and
91 remains a publicly traded company after a change in control, the
92 publicly traded company shall not be required to notify its existing
93 clients of such change in control. For purposes of this section, "change
94 in control" means any transfer or transfers within a twelve-month
95 period of more than fifty per cent of the assets or ownership interests,
96 directly or indirectly, of the exchange facilitator.

97 Sec. 3. (NEW) (*Effective October 1, 2013*) An exchange facilitator at all
98 times shall:

99 (1) Maintain a fidelity bond in an amount of not less than one
100 million dollars executed by an insurer authorized to do business in this
101 state;

102 (2) Deposit all exchange funds in a separately identified account, as
103 defined in 26 CFR 1.468B-6(c)(2)(ii)(A), and provide that any
104 withdrawals from such separately identified account require the
105 written authorizations of both the client and the exchange facilitator.
106 Deliver authorization for withdrawals by any commercially reasonable
107 means, including (A) the client's delivery to the exchange facilitator of
108 the client's authorization to disburse exchange funds and the exchange

109 facilitator's delivery to the depository institution of the exchange
110 facilitator's sole authorization to disburse exchange funds, or (B)
111 delivery to the depository institution of both the client's and the
112 exchange facilitator's authorizations to disburse exchange funds; or

113 (3) Deposit all exchange funds in a qualified escrow or qualified
114 trust, as such terms are defined in 26 CFR 1.1031(k)-1(g)(3), with a
115 financial institution and provide that any withdrawals from such
116 qualified escrow or qualified trust require the taxpayer's and the
117 exchange facilitator's written authorization.

118 Sec. 4. (NEW) (*Effective October 1, 2013*) An exchange facilitator at all
119 times shall: (1) Maintain an errors and omissions policy of insurance in
120 an amount not less than two hundred fifty thousand dollars executed
121 by an insurer authorized to do business in this state; (2) deposit an
122 amount of cash or securities; or (3) provide irrevocable letters of credit
123 in an amount not less than two hundred fifty thousand dollars.

124 Sec. 5. (NEW) (*Effective October 1, 2013*) The Banking Commissioner
125 may adopt regulations, in accordance with the provisions of chapter 54
126 of the general statutes, to implement the provisions of sections 1 to 8,
127 inclusive, of this act. Any person claiming to have suffered damage by
128 reason of the failure of an exchange facilitator to comply with the
129 provisions of sections 2 to 7, inclusive, of this act may file a claim with
130 the commissioner against the exchange facilitator to recover such
131 damage from (1) the fidelity bond maintained in accordance with
132 subdivision (1) of section 3 of this act, (2) cash or securities deposited
133 in accordance with subdivision (2) of section 4 of this act, (3) letters of
134 credit provided in accordance with subdivision (3) of section 4 of this
135 act, or (4) the errors and omissions policy maintained in accordance
136 with subdivision (1) of section 4 of this act.

137 Sec. 6. (NEW) (*Effective October 1, 2013*) (a) An exchange facilitator
138 shall hold all exchange funds, including money, property, other
139 consideration or instruments received by the exchange facilitator from

140 or on behalf of the client, but not including funds received as the
141 exchange facilitator's compensation, in a manner that provides
142 liquidity and preserves principal. An exchange facilitator shall provide
143 the client with written notification of the manner in which the
144 exchange funds will be invested or deposited and shall deposit or
145 invest exchange funds in investments which meet the prudent investor
146 standard and which satisfy investment goals of liquidity and
147 preservation of principal. Exchange funds may be pooled. For
148 purposes of this section, an exchange facilitator violates the prudent
149 investor standard if:

150 (1) Exchange funds are knowingly commingled by the exchange
151 facilitator with the operating accounts of the exchange facilitator; or

152 (2) Exchange funds are loaned or otherwise transferred to any
153 person or entity affiliated with or related to the exchange facilitator
154 except that this subdivision shall not apply to a transfer made
155 pursuant to the exchange contract (A) for payment of an exchange
156 expense or completion of the acquisition of the replacement property,
157 (B) for depositing exchange funds with a financial institution, or (C) to
158 an exchange accommodation titleholder, a trustee of a qualified trust
159 or a qualified escrow agent.

160 (b) Exchange funds are not subject to execution or attachment on
161 any claim against the exchange facilitator. An exchange facilitator shall
162 not knowingly keep or cause to be kept any money in any financial
163 institution under any name designating the money as belonging to a
164 client of the exchange facilitator unless the money equitably belongs to
165 the client and was actually entrusted to the exchange facilitator by the
166 client.

167 Sec. 7. (NEW) (*Effective October 1, 2013*) No exchange facilitator or, in
168 the case of an exchange facilitator that is an entity, no owner, officer,
169 director or employee of such exchange facilitator, shall knowingly:

170 (1) Make any material misrepresentations concerning any exchange

171 facilitator transaction that are intended to mislead;

172 (2) Pursue a continued or flagrant course of misrepresentation or
173 making false statements through advertising or by any other means;

174 (3) Fail, within a reasonable time, to account for any money or
175 property belonging to another person that may be in the possession or
176 under the control of the exchange facilitator;

177 (4) Engage in any conduct constituting fraudulent or dishonest
178 dealings;

179 (5) Commit any crime related to the exchange facilitation business
180 involving fraud, misrepresentation, deceit, embezzlement,
181 misappropriation of funds, robbery or other theft of property, except
182 that commission of such crime by an officer, director or employee shall
183 not be considered a violation of this section, provided (A) the
184 employment or appointment of such officer, director or employee has
185 been terminated, and (B) no clients of the exchange facilitator were
186 harmed or full restitution has been made to all harmed clients;

187 (6) Materially fail to fulfill the exchange facilitator's contractual
188 duties to the client to deliver property or funds to the client unless
189 such failure is due to circumstances beyond the control of the exchange
190 facilitator; and

191 (7) Materially violate any provision of sections 2 to 6, inclusive, of
192 this act or the regulations adopted by the Banking Commissioner in
193 accordance with section 5 of this act.

194 Sec. 8. (NEW) (*Effective October 1, 2013*) (a) A person who violates
195 any provision of sections 2 to 7, inclusive, of this act is subject to civil
196 suit in a court of competent jurisdiction.

197 (b) Any person who commences a civil action pursuant to
198 subsection (a) of this section shall notify the Department of Banking
199 upon filing such action.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	New section
Sec. 3	<i>October 1, 2013</i>	New section
Sec. 4	<i>October 1, 2013</i>	New section
Sec. 5	<i>October 1, 2013</i>	New section
Sec. 6	<i>October 1, 2013</i>	New section
Sec. 7	<i>October 1, 2013</i>	New section
Sec. 8	<i>October 1, 2013</i>	New section

Statement of Purpose:

To require persons and entities to comply with best practices and standards when they facilitate tax deferred exchanges in this state.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]

Co-Sponsors: REP. SHABAN, 135th Dist.

H.B. 5392